

No.

**S180365**

**IN THE SUPREME COURT OF THE  
STATE OF CALIFORNIA**

---

CITY OF DANA POINT,

*Plaintiff and Respondent*

vs.

DANA POINT SAFE HARBOR COLLECTIVE,  
a California non-profit corporation,

*Defendant and Appellant*

SUPREME COURT  
FILED

FEB 19 2010

Frederick K. Ohlrich Clerk  
Deputy

---

**Supreme Court Copy**

PETITION FOR REVIEW  
OF DECISION OF THE COURT OF APPEAL  
FOURTH APPELLATE DISTRICT  
DIVISION THREE

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COPY

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**PETITION FOR REVIEW**

**To the Honorable Chief Justice of the California Supreme Court, and  
the Associate Justices of the Supreme Court of California:**

**Dana Point Safe Harbor Collective, Defendant and Appellant,  
respectfully petitions for review following the decision of the Court of  
Appeal G0422878, Fourth Appellate District, Division Three per  
William Rylaarsdam, Acting P. J., filed on February 11, 2010.**

**ISSUE PRESENTED FOR REVIEW**

This case presents the following issue for review:

Whether an order of the Superior Court enforcing and compelling compliance with a legislative subpoena is appealable. Review is requested pursuant to Rule 8.500(b)(1) and deemed legally necessary to resolve inconsistent present opinions by the First, Second, Third, Fourth and Sixth District Courts of Appeal regarding appealability of the underlying Superior Court order compelling compliance with a legislative subpoena. It is, therefore, respectfully asserted that review should be granted to secure uniformity of decision and to settle an important question of law.

**STATEMENT OF THE CASE**

On or about July 2, 2009, City of Dana Point (hereinafter Dana Point) served a subpoena on Safe Harbor and other unrelated entities

directing the production of 44 categories of documents on or before July 27, 2009. The subpoena was issued in the absence of any pending litigation or administrative proceedings between Dana Point and Safe Harbor or any of the other unrelated entities which also participated in the Superior Court proceedings. The subpoena, among other things, requested all records which identify members of the collectives and the amounts and costs of all medical marijuana supplied to the members by the Dana Point Safe Harbor Collective. On July 22, 2009, Richard C. Brizendine, counsel for Safe Harbor, wrote to legal counsel for Dana Point and served written objections to the subpoena duces tecum raising appropriate legal objections including the members' rights to medical privacy.

Dana Point then moved for an order in the Superior Court compelling compliance with the subpoena duces tecum. On August 28, 2009, counsel for Dana Point and counsel for all entities including Safe Harbor appeared in court and stipulated that the hearings on the related Orders to Show Cause would be heard on October 2, 2009, before the Honorable Glenda Sanders, Judge.

On November 2, 2009, the trial court issued its final Order which directed Appellant, and other parties in related proceedings before the court, to obey the legislative subpoena. A true copy of the order is attached hereto

as Exhibit 1. A timely appeal was filed by Appellant on November 10, 2009, pursuant to California Code of Civil Procedure §904.1. The trial court, on December 3, 2009, stayed enforcement of its order during the pendency of the appeal and Appellant timely designated the Record on Appeal which was filed on December 28, 2009.

On January 26, 2010, Appellant filed its Application for Extension of Time to File Its Opening Brief in view of a motion which was then pending before this Court to consolidate the above action with four other pending appeals all filed in response to the Superior Court Order of November 2, 2009. On January 29, 2010, Appellant received the order of this Court declaring that the Court on its own motion finds the appeal in this case is not from an appealable order and deeming the appeal to be a petition for extraordinary writ. A true copy of said order is attached hereto as Exhibit 2. The Court also vacated the previously established briefing schedule on appeal and denied Appellants' motion to consolidate the related cases on appeal.

On February 8, 2010, Dana Point filed its Motion to Vacate Order and to Reinstate Appeal whereby it requested the Appellate Court to vacate its Order of January 29, 2010, and to reinstate the appeal with a new briefing schedule. On February 11, 2010, the Appellate Court summarily

denied the Motion to Vacate. A true copy of the order is attached hereto as Exhibit 3.

### **ARGUMENT IN SUPPORT OF REVIEW**

#### **I. THE BETTER VIEW IS THAT AN ORDER COMPELLING COMPLIANCE WITH ADMINISTRATIVE AND LEGISLATIVE SUBPOENAS IS APPEALABLE**

It appears there is a present split of authority on the appealability on Superior Court orders enforcing administrative and analogous legislative subpoenas issued pursuant to California Government Code §37104 et seq. Some courts have held such orders are non-appealable and may only be reviewed by writ. See, Bishop v. Merging Capital, Inc., 49 Cal.App.4th 1803, 1806-09, 57 Cal.Rptr.2d 556 (Second District 1996) and Pacific-Union Club v. Superior Court, 232 Cal.App.3d 60, 68-69, 283 CalRptr. 287, fn. 3 (First District 1991).

The Sixth District Court of Appeal has expressly found that an order to compel compliance with a legislative subpoena pursuant to Government Code §37104 is appealable as a final judgment. City of Santa Cruz v. Patel, 155 Cal.App.4th 234, 240-43, 65 Cal.Rptr.3d 824 (6<sup>th</sup> Dist. 2007). The Patel court cited extensively from Millan v. Restaurant Enterprises Group, Inc., 14 Cal.App.4th 477, 18 Cal.Rptr.2d 198 (Fourth Dist. 1993), in

support of its ruling and a contrary line of cases from the Second District Court of Appeal was discussed and rejected in favor of the “better view” of the Fourth District Court of Appeal.

The orders before us compel compliance with legislative subpoenas pursuant to Government Code section 37104 *et seq.* As to these, we believe the better view is that the orders are appealable as final judgments. A judgment is the “final determination of the rights of the parties in an action or proceeding.” The statutory scheme at hand provides for an original proceeding in the superior court, initiated by the mayor’s report to the judge, which results in an order directing the respondent to comply with a city’s subpoena. Indeed, the compliance order is tantamount to a superior court judgment in mandamus, which, with limited statutory exceptions, is appealable. Whether the matter is properly characterized as an “action” or a “special proceeding”, it is a final determination of the rights of the parties. It is final because it leaves nothing for further determination between the parties except the fact of compliance or noncompliance with its terms. The fact that an intransigent witness may be subject to a contempt order does not mean that the order compelling compliance is not final. The normal rule is that “injunctions and final judgments which form the basis for contempt sanctions are appealable. . . . The purpose of any judicial order which commands or prohibits specific conduct is to make the sanction of contempt available for disobedience. As we have noted, this fact does not render such an order ‘nonfinal,’ and thus nonappealable.” It must be reviewed, if at all, by writ. Therefore, review of the underlying order can reliably be had only if that order is appealable. The superior court’s order determined all of the parties’ rights and liabilities at issue in the proceedings; the only determination left was the question of future compliance, which is present. We

conclude that the orders herein must be deemed final judgments and are, therefore, appealable pursuant to Code of Civil Procedure section 904.1, subdivision (a)(1). Patel supra at 242-243, *internal citations*.  
omitted

The Third District has recently ruled that an order compelling compliance with an administrative subpoena is appealable and expressed its disappointment due to the California Supreme Court's prior "deflection" of the jurisdictional question of appealability. State ex rel. Dept. of Pesticide Regulation v. Pet Food Exp. Ltd., 165 Cal.App.4th 841, 81 Cal.Rptr.3d 486 (Third District 2008). The Dept. of Pesticide opinion also quotes extensively from Patel, supra, and the Fourth District decision in Millan, supra.

The Fourth District to which this matter was appealed has previously stated and found that the "better view" is that such orders are appealable as final judgments in special proceedings. Millan, supra at 484-85.

Moreover, the better view is that "orders requiring compliance with the subpoenas are appealable as final judgments in special proceedings. . . Numerous cases, including cases from our Supreme Court, have decided appeals taken from similar orders on the merits without discussion of the appealability issue. Inasmuch as the Supreme Court is among those courts which have assumed the appealability of such orders, we conclude such an order is appealable . . . The issue on this appeal, whether the subpoena meets constitutional standards for enforcement, is a matter of law and is reviewed *de novo*. Millan, supra [internal citations

omitted].

Millan was, in fact, followed by the Fourth District in People ex rel. DuFauchard v. U. S. Financial Management, Inc., 169 Cal.App.4th 1502, 87 Cal.Rptr.3d 615 (Fourth District 2009). The court cited Dept. of Pesticide, supra, and Millan, supra, in ruling that an order compelling compliance with an administrative subpoena is appealable.

We agree with the court's analysis in State ex rel. Dept. of Pesticide Regulation. In this case, the trial court's order compelling compliance with the Commissioner's administrative subpoena constituted a final determination of the parties' rights, notwithstanding the possibility that further proceedings might be required to gain U.S. Financial Management's compliance with that order. (See State ex rel. Dept. of Pesticide Regulation, supra, 165 Cal.App.4th at p. 852, 81 Cal.Rptr.3d 486.) As such, the order constitutes an appealable final judgment pursuant to Code of Civil Procedure section 904.1, subdivision (a)(1). (See State ex rel. Dept. of Pesticide Regulation, supra, 165 Cal. App.4th at p. 849, 81 Cal.Rptr.3d 486.)

## II. CONCLUSION

In view of the foregoing, it is respectfully submitted that the Petition for Review should be granted and the matter remanded to the Fourth District Court of Appeal with instructions to reinstate the appeal.

DATED: February 17, 2010

EVANS, BRIZENDINE & SILVER

By William D. Evans  
WILLIAM D. EVANS,  
Attorneys for Dana Point  
Safe Harbor Collective

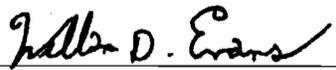
**CERTIFICATE OF COMPLIANCE**

**California Rules of Court, Rule 8.204**

The foregoing brief is proportionately spaced, using 13-point Times New Roman Regular. The word count of 2,208 is based on information provided by Corel WordPerfect word processing program and therefore does not exceed the limits provided by Rule 8.204, California Rules of Court.

I certify that the foregoing is true and correct.

Executed this 17<sup>th</sup> day of February, 2010, at Long Beach, California.

  
\_\_\_\_\_  
WILLIAM D. EVANS

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**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER

NOV 02 2009

CARLSON, Clerk of the Court  
*Glenda Sanders*

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

12 In Re:  
13 ENFORCEMENT AGAINST DANA POINT  
14 SAFE HARBOR COLLECTIVE OF CITY OF  
15 DANA POINT CITY COUNCIL SUBPOENA

Case No. 30-2009-00298200

**[REDACTED] ORDER**

Date: October 22, 2009  
Time: 10:00 a.m.  
Dept.: C-17  
Judge: Hon. Glenda Sanders

17  
18 The hearing on the City of Dana Point's ("City") application for an order compelling  
19 Respondent Dana Point Safe Harbor Collective ("Respondent") to respond to the City Subpoena  
20 came on regularly for hearing on October 22, 2009, at 10:00 a.m. in Department C-17 of the  
21 above-entitled Court, the Honorable Glenda Sanders, Judge Presiding.

22 Upon consideration of the pleadings and papers filed in support of and in opposition to the  
23 City application, and after considering the arguments of counsel, and good cause appearing,

24 IT IS ORDERED, ADJUDGED AND DECREED THAT:

25 Respondent's custodian of records, David Niedhardt, shall produce all documents and  
26 records responsive to the City Subpoena to the City of Dana Point at the office of Rutan & Tucker,  
27 611 Anton Boulevard, Suite 1400, Attention: Patrick Muñoz, Costa Mesa, California 92626, no  
28 later than 5:00 p.m. on December 7, 2009.

**EXHIBIT 1**



**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER

NOV 02 2009

CARLSON, Clerk of the Court

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

In re: Enforcement Against the Point Alternative Care of City of Dana Point City Council's Subpoena.	30-2009-00298187  FINAL RULING Dept. C17
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**City of Dana Point v. Point Alternative Care;  
Holistic Health; Safe Harbor Collective; Beach Collective and Beach Cities Collective.**

The Mayor of the City of Dana Point in her report to this Court pursuant to Government Code 37106 notifies the Court that:

1. The City has learned that the Respondents are likely operating as marijuana dispensaries within the City's borders;
2. These Respondent Dispensaries have not obtained any authorization from the City to do so;
3. The City has received several complaints from residents and business owners concerning some of these dispensaries;
4. The Respondent Dispensaries are operating beyond the scope of their Occupancy Permits;

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5. The Dana Point Municipal Code states that any proposed land use not expressly allowed in a given district is prohibited;

6. Medical marijuana dispensaries are not listed as permitted uses in the City;

7. Based on this information, and against the background of State and Federal Law as well as the AG Guidelines, the City Council authorized her to issue subpoenas pursuant to GC 37104 "for the purpose of gathering information that could assist the City in its investigation as to whether medical marijuana dispensaries located in the City are operating in compliance with applicable law."

GC 37104 provides that a legislative body may issue subpoenas requiring the attendance of witnesses or production of books or other documents for evidence or testimony in any action or proceeding pending before it. The issuance of the subpoena is valid if:

1. It is authorized by ordinance or similar enactment;
2. It serves a valid legislative purpose;
3. The witnesses or materials subpoenaed are pertinent to the subject matter of the investigation.

**Re 1: Authorized by Ordinance or Similar Enactment**

The first requirement is clearly met. Just as the City of Lodi's city council was specifically authorized to issue subpoenas pursuant to GC 37104 so too is the City of Dana Point. This is the "ordinance" or "other enactment" to which the Courts in *Connecticut Indemnity* at 813, and *Wilkerson v. United States* 365 U.S. 339, 408-409 are referring. The facts in *Wilkerson* were very different from the facts here. In *Wilkerson* the entity that issued the subpoena was the House Committee on Un-American Activities. The respondent challenged that committee's power to issue a legislative subpoena. The Supreme Court determined that the Committee derived its power to issue legislative subpoenas from 2 U.S.C Section 192 which empowered the House of Representatives and its Standing

1 Committees (including the subject committee) to issue them. Here we are dealing with an  
2 entity which is specifically authorized to issue legislative subpoenas pursuant to GC  
3 37104.

4 The Respondents also appear to suggest that the City of Dana Point cannot issue the  
5 subpoenas absent an ordinance similar to the *Vacaville* city ordinance imposing a duty  
6 on hotel owners to collect and remit an occupancy tax to the City of Vacaville. This is not  
7 correct. There is no authority for the proposition that a legislative entity is only  
8 empowered to issue a subpoena in connection with an *existing* ordinance as opposed to  
9 an ordinance it might enact after conducting its legislative enquiry. (See *Connecticut*  
10 *Indemnity* at B14 citing *Barenblatt v. U.S.* "The scope of the power of inquiry ...is as  
11 penetrating and far reaching as the potential power to enact and appropriate...")

12  
13 **Re 2: Serves a Valid Legislative Purpose**

14 A legislative body may conduct an investigation in order to assist its decision making  
15 regarding legislative matters. *Connecticut Indemnity Company v. Lodi* 23 Cal. 4<sup>th</sup> 807.  
16 The investigation cannot be an end in and of itself. *Watkins*, 354 US 178. The  
17 investigation must be for a legislative purpose. Respondents argue that the City, in  
18 declaring it was issuing the subpoenas "to investigate whether medical marijuana  
19 dispensaries are operating in compliance with applicable law" essentially admits that the  
20 subpoenas were issued, not for any legislative purpose, but rather for the improper  
21 purpose of determining whether to prosecute them for non compliance with applicable  
22 law.

23  
24 The Court rejects this argument. It is clear from a reading of the Mayor's entire report that  
25 the City authorized the issuance of the subpoenas to investigate whether the  
26 dispensaries are complying with the law in order to determine how to respond to  
27 residents' concerns about the manner in which the dispensaries are conducting  
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1 business, whether under existing zoning laws they should be permitted to conduct such  
2 businesses, whether the zoning laws need to be amended to accommodate the  
3 dispensaries, and if so what amendments are necessary. Mayor's Report Para.s 1-2.  
4 The Mayor and the other Council members were elected to legislate on precisely such  
5 matters.

6  
7 In *Vacaville* the court held that the subpoena was properly issued for the purpose of  
8 enabling the city to investigate whether a business was violating a tax ordinance. The  
9 court ruled that the City Council was considering the valid legislative concern of carrying  
10 out the audit of an uncooperative taxpayer to determine compliance with the City's taxing  
11 ordinance. The court held that matters relating to the investigation and enforcement of tax  
12 measures are proper legislative concerns. The Vacaville City Council met to consider the  
13 tax administrator's effort to obtain cooperation with the tax audit. The City Council  
14 authorized the mayor to issue the subpoena and to apply to the superior court for  
15 enforcement of the subpoena as authorized by GC section 37104. Thus the tax audit and  
16 the reluctant taxpayer's refusal to comply with the subpoena were considered by the  
17 court in *Vacaville* to be proper subjects of legislative enquiry by the City Council.

18  
19 Likewise here the City's concern that the dispensaries may be operating beyond the  
20 scope of their occupancy permits is a proper subject of legislative enquiry. The essential  
21 facts in the case at bar are indistinguishable from the facts in *Vacaville* and those in  
22 *Connecticut Indemnity*. The City, in furtherance of its legislative powers, is entitled to  
23 investigate whether dispensaries are operating under the law to determine if they should  
24 be allowed to continue operating as dispensaries in city limits, and if so under what  
25 conditions.

26 Because the City's issuance of the subpoenas was, in itself, a proper exercise of  
27 legislative power, the potential that the City might also use information gained by the

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1 subpoenas in future litigation against the dispensaries does not render them invalid.  
2 *Connecticut Indemnity Company* at 816 ("When a city's issuance of a subpoena is, in  
3 itself, a proper exercise of legislative power, the potential that the city also may use the  
4 information gained by that subpoena in future litigation does not render the subpoena  
5 invalid".) In *Connecticut Indemnity* the Supreme Court of California went on to state  
6 "...it is well established that courts generally do not engage in such second-guessing of  
7 legislative motive....". *Id. at 816.*

8  
9 **Re 3: The witnesses or materials subpoenaed are pertinent to the subject matter of**  
10 **the legislative investigation.**

11 Respondents claim that the demands are overly broad but they fail to indicate with  
12 specificity which documents are not reasonably related to the legislative purpose  
13 described above. A challenge to a subpoena for lack of specificity must fall unless the  
14 challenging party can demonstrate that the demands in the subpoenas are not pertinent  
15 to the subject matter of the investigation. *Connecticut Indemnity at 816-817.*

16 The City is entitled to information to determine if the entities are acting within current  
17 state and local laws to determine whether it should allow the entities to continue to  
18 operate and, if so, to decide what additional local regulation may be required. The City  
19 has provided the uncontroverted expert opinion of Mr. Goodrich as to the relevance of  
20 the documents sought to a proper forensic evaluation of the question whether the  
21 respondent entities are maintaining financial and other records necessary for compliance  
22 with the enabling legislation and the AG Guidelines. Even absent such an opinion the  
23 Court considers that the subpoenas seek pertinent documents and records. The court  
24 lists below the specific demands and primary relevance each demand has to the  
25 purposes stated above:

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1           **Demands 1-11, 34, 37, 40, 41, 42, 43, and 44** relate to the general business  
2 operation of the entities, including compliance with the tax laws. The enabling legislation  
3 prescribes the structure of entities entitled to provide medical marijuana.

4           **Demands 13-23, 36, 37, and 39** seek information regarding compliance with specific  
5 aspects of H&S § 11362.7. The documents requested relate to each Respondent's  
6 status as a primary caregiver, clinic, residential care facility, residential care facility for  
7 elderly, hospice, home health agency, cooperative, or collective. The demands also  
8 include demands for documents showing verification of member qualifications and  
9 verification of caregiver status.

10           **Demands 12 and 24-33** seek information regarding the supply of marijuana to  
11 Respondents. The documents sought relate to the source of the marijuana, its cost,  
12 methods of exchange, amount cultivated, amount stored, transportation, distribution and  
13 security measures.

14           **Demands 36, 38 and 39** seek information necessary to determine the qualifications  
15 of persons to be members of the entities under both H&S 11362.7 and the Attorney  
16 General guidelines. The documents sought include names of members, names of  
17 persons designated as primary caregivers, and documents supporting the designation of  
18 an entity or person as a primary caregiver.

19           The City has specifically not sought copies of marijuana recommendations, patient  
20 medical files, and information related to the medical condition for which the  
21 marijuana was recommended. See City's Reply to Safe Harbor's Opposition, Page 7,  
22 lines 19-23 and footnote 3. (A similar statement is made by the City in its Reply to each  
23 of the Respondents' Oppositions).

24

25           **The 5<sup>th</sup> Amendment, Brown Act, Equal Protection, Separation of Powers, 4<sup>TH</sup>**  
26 **Amendment and Privacy Objections:**

27

28

1 Having considered the arguments made by Petitioner and each Respondent concerning  
2 these issues or objections, the Court is persuaded by the City's arguments and  
3 accordingly concludes these objections have no merit. Each of these objections is  
4 overruled.

5  
6 The Court has, however, signed the Protective Order proposed by the City to ensure that  
7 the names of members are treated as "Confidential Information" to be made available  
8 only to those designated as "Qualified Persons" within the meaning of the Protective  
9 Order. As such, the names of members will be made available only to that very limited  
10 group of persons who have a justifiable need to know such information in order to assist  
11 the City in the performance of its legislative purpose.

12  
13 The Court's Orders.

14 The Court finds that the City's subpoenas were properly served in furtherance of a proper  
15 legislative purpose. While at least one of the Respondents has produced some  
16 documents responsive to the City's subpoena, none of the Respondents has produced all  
17 the documents and records sought by the subpoena.

18 The Court has accordingly signed orders requiring the individual served with the  
19 subpoena (on behalf of the Respondent for which he was authorized to accept service of  
20 the subpoena at Court on October 2, 2009) to produce all documents and records  
21 responsive to the subpoena on December 7, 2009 no later than 5PM at the offices of  
22 Rutan & Tucker, 611 Anton Boulevard, Suite 1400, Costa Mesa, CA. Thus the Court has  
23 signed orders requiring: (1) Stephen Hase, (2) Garrison Williams, (3) David Niedhardt, (4)  
24 Kevin Sperry and (5) David Lambert for and on behalf of The Point Alternative Care,  
25 Holistic Health, Safe Harbor Collective, Beach Collective and Beach Cities Collective  
26 respectively, to produce all documents and records responsive to the City's Subpoena at  
27 the time and place mentioned above.

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Any records containing "Confidential Information" as defined in the Protective Order signed by the Court shall be produced and handled in accordance with the provisions of that Protective Order.

The Court has signed the Protective Order to protect the confidentiality interests of Respondents' medical marijuana members. Any willful breaches of the Protective Order will result in the issuance of an Order to Show Cause why sanctions for contempt of Court should not be issued against the person breaching the Protective Order.

November 2, 2009



Glenda Sanders

Judge, Superior Court of California.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

COURT OF APPEAL-4TH DIST DIV 3  
FILED

DIVISION THREE

JAN 29 2010

DANA POINT SAFE HARBOR  
COLLECTIVE,

Petitioner,

v.

THE SUPERIOR COURT OF ORANGE  
COUNTY,

Respondent;

CITY OF DANA POINT,

Real Party in Interest.

Deputy Clerk \_\_\_\_\_

G042878

(Super. Ct. No. 30-2009-00298200)

ORDER

THE COURT:\*

The court finds the appeal in this case is not from an appealable order and deems the notice of appeal filed on November 10, 2009, to be a petition for extraordinary writ. (*Olson v. Cory* (1983) 35 Cal.3d 390; *H.D. Arnaiz, Ltd. v. County of San Joaquin* (2002) 96 Cal.App.4th 1357, 1366-1367.) Petitioner, Dana Point Safe Harbor Collective, has 15 days from the date of this order to file a petition for extraordinary writ. Any informal response shall be filed within 5 days thereafter. No extensions of time will be granted absent a showing of extraordinary good cause.

On the court's own motion and for good cause, the previous briefing schedule on appeal is hereby VACATED and any request for an extension of time to file a brief is MOOT.

COPY

EXHIBIT 2

G042878

City of Dana Point v. Dana Point Safe Harbor Collective

Superior Court of Orange County

William Evans  
Evans, Brizendine and Silver  
5826 E. Naples Plaza  
Long Beach, CA 90803

The Superior Court of California, County of Orange  
Attn: Hon. Glenda Sanders  
700 Civic Center Dr., W.  
Santa Ana, CA 92701

Patrick A. Munoz  
Rutan & Tucker  
611 Anton Blvd Ste 1400  
Costa Mesa, CA 92628-1950

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION THREE

DANA POINT SAFE HARBOR  
COLLECTIVE,

Petitioner,

v.

THE SUPERIOR COURT OF ORANGE  
COUNTY,

Respondent;

CITY OF DANA POINT,

Real Party in Interest.

G042878

(Super. Ct. No. 30-2009-00298200)

ORDER

COURT OF APPEAL-4TH DIST DIV 3  
FILED

FEB 11 2010

Deputy Clerk \_\_\_\_\_

THE COURT:\*

Petitioner's motion to vacate the order filed by this court on January 29,  
2010, and to reinstate the appeal is DENIED.

**RYLAARSDAM, J.**

RYLAARSDAM, ACTING P. J.

\* Before Rylaarsdam, Acting P. J., Moore, J., and Aronson, J.

**EXHIBIT 3**

**PROOF OF SERVICE**

I am employed in the County of Los Angeles, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 5826 East Naples Plaza, Long Beach, California.

On February 18, 2010, I served the foregoing PETITION FOR REVIEW by placing a true copy thereof enclosed in a sealed envelope, as follows:

Rutan & Tucker  
A. Patrick Munoz  
Noam I. Duzman  
Jennifer J. Farrell  
611 Anton Blvd., 14<sup>th</sup> Floor  
Costa Mesa, CA 92626

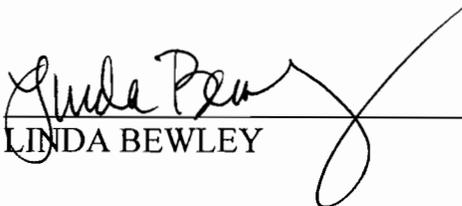
Clerk of the Court of Appeal  
Fourth District, Division Three  
601 West Santa Ana Boulevard  
Santa Ana, CA 92701

Clerk of the Superior Court  
700 Civic Center Drive West  
Santa Ana, CA 92701

I caused such envelopes to be deposited in the mail at Long Beach, California or placed for collection and mailing on the date and at the place shown above following our ordinary business practices. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the United States postal service on that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing affidavit. The envelopes were mailed with postage thereon fully prepaid.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 18<sup>th</sup> day of February, 2010, at Long Beach, California.

  
LINDA BEWLEY